

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1164 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and

MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

NATU @ BHUPAT BABU RAJPUT

Versus

STATE OF GUJARAT

Appearance:

MR BB DESAI with MR YS LAKHANI for Petitioner

MR AJ DESAI ASST. PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE R.BALIA.

Date of decision: 26/09/96

ORAL JUDGEMENT

1. The appellant is the accused of Sessions Case No. 80 of 1988 in the court of Additional Sessions Judge, Bhavnagar for offence under Section 8 of the NDPS Act.

As per the provisions of Section 17, it seems that the accused has been convicted by the learned Sessions Judge by judgement dated 2.11.1992 and awarded ten years rigorous imprisonment and a fine of Rs.1.00 lakh and simple imprisonment for three months in default.

2. Two points are averred by the learned advocate Shri Lakhani. One is non-compliance with the mandatory Sections 41, 42 and 50 of the NDPS Act and the second is mere fundamental, factually speaking, as to absence of any proof with regard to seizure of article being a narcotic covered by the provisions of the said Act.

3. Factually, the point is well taken. Neither the P.S.I. Shri Rathod who carried the raid nor any of the witnesses of the prosecution have referred to the Forensic Science Laboratory report, which is still to be found along with the police papers, from the original record.

4. What is given on record is therefore only the opinion expressed by the witnesses as to the seized article being opium. The basic ingredient of bringing the offence home against the accused under the provisions of NDPS Act is therefore missing.

5. Shri Rathod, P.S.I. of Special Prohibition Squad of State of Gujarat at Ahmedabad has admitted that he had gone Sihore area of District Bhavnagar for the work of said Squad and carried the raid on receiving the information on the spot. However, neither on that date nor thereafter has he submitted any report in writing to his superior officer. There is no question of Section 50 being complied with at all because no one seems to be aware of it.

6. All told therefore, we have no hesitation in accepting the submission of Shri Lakhani and allow the appeal. The appeal is therefore allowed. The order of conviction is set aside. The appellant is ordered to be released forthwith, if not required for any other purpose. Fine, if paid, is ordered to be refunded.

(devu)